

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JAMES C. NELSON,)
)
Petitioner,)
)
vs.) CIVIL NO. 10-cv-343-JPG
)
SGT. GIBBS,)
)
Respondent.)

MEMORANDUM AND ORDER

GILBERT, District Judge:

Petitioner James C. Nelson, an inmate in the Alton Law Enforcement Center, brings this habeas corpus action pursuant to 28 U.S.C. § 2241. This case is now before the Court for a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in United States District Courts. Rule 4 provides that upon preliminary consideration by the district court judge, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” Rule 1(b) of those Rules gives this Court the authority to apply the rules to other habeas corpus cases. After carefully reviewing the petition in the present case, the Court concludes that Nelson is not entitled to relief, and the petition must be dismissed.

On November 9, 2009, Nelson entered a guilty plea to drug and firearms charges in a criminal proceeding in this District. *See United States v. Nelson*, Case No. 08-cr-30266-MJR-DGW (S.D. Ill., filed Dec. 16, 2008). To date Nelson has not been sentenced, and he remains in custody.

In this action, Nelson challenges the validity of his guilty plea in that criminal proceeding. He also raises issues of unlawful police conduct: unconstitutional traffic stop, unconstitutional search, unlawful arrest and detention, defective arrest warrant, lack of jurisdiction, and material misrepresentation.

The proper way for Nelson to raise these issues is within the context of his pending criminal case, not in a separate habeas corpus proceeding. Moreover, the Court notes that Nelson has a separate civil rights claim pending in this District against the arresting officers, in which he challenges the validity of this same traffic stop, search, arrest, and detention. *See Nelson v. Henson*, Case No. 09-cv-361-GPM-CJP (S.D. Ill., filed May 11, 2009) (action stayed pending resolution of criminal proceedings). Thus, the claims he raises in this action regarding those events are duplicative.

In summary, this habeas action does not survive review under Rule 4. Accordingly, this action is **DISMISSED**. Dismissal is without prejudice to Nelson raising his claims in his pending criminal matter or in his other pending civil action.

IT IS SO ORDERED.

Dated: August 10, 2010.

s/ J. Phil Gilbert
U. S. District Judge